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CHARLES ELMORE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1929.

No. 229

THE DISTRICT OF COLUMBIA, A MUNICIPAL CORPORATION, PETITIONER,

vs.

CHARLES H. FRED, ALIAS HAMILTON C. FRED.

BRIEF ON BEHALF OF PETITIONER.

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BRIEF ON BEHALF OF PETITIONER.

Statement of Case.

1. THE LAW.

The Congress of the United States, sitting as the legislature for and in its sovereign capacity over the District of Columbia, on March 3, 1925, enacted a law (43 Stat. 1119) for the regulation and control of motor-vehicle traffic in the District of Columbia known as

> "An Act to provide for the regulation of motor-vehicle traffic in the District of Columbia, increase the number of judges of the police court, and for other purposes. * * *"

1*j*

This Act after providing comprehensive machinery for the carrying into effect of its designated purposes through the medium of a director of traffic, together with a complete revision of the law relating to operators' permits and their revocation and suspension, amended certain sections of the Code of Laws for the District of Columbia, to wit: Sections 42, 44, 45 and 204.

Congress later by its enactment on July 3, 1926 (44 Stat. 812), enlarged the jurisdiction of the Commissioners of the District of Columbia and their traffic director by providing for the further regulation and control of all vehicles, pedestrians, draft animals, beasts of burden and all appliances moved over the highways on wheels or traction tread, including street cars. This amendment likewise directed that all prosecutions for violations of provisions of both Acts, as well as regulations promulgated thereunder, be by information filed by the corporation counsel for the District of Columbia, except one provision relating to the possession and use of "smoke screens". The combined Acts are therefore among those classified as police or municipal regulations (United States *v.* Cella, 57 App. D. C., 433-435).

The amending Act repealed Section 7 of the original one dealing with operators' permits and the part of Section 13 relating to revocation and suspension of operators' permits, and specifically re-enacted them in broader and more comprehensive terms, giving to your petitioner additional powers on the subject-matter, as well as granting to individuals whose permits had been suspended or revoked the right of appeal to

the Commissioners of the District of Columbia, and to the Court of Appeals of the District of Columbia.

These two Acts of Congress are known as and will be cited in this brief as "The Traffic Act for the District of Columbia."

2. The Facts.

On November 8, 1926, petitioner, through its director of traffic issued to respondent Fred, a resident of the District of Columbia, a District of Columbia permit to operate a motor vehicle in the District (R. p. 7).

On the 15th day of December, 1926, the director of traffic, under authority of Section 13 of the District of Columbia Traffic Act, revoked said permit and right of respondent to operate a motor vehicle in the District of Columbia (R. p. 8).

On the 26th day of December of the same year respondent was personally served in the District of Columbia with a copy of said order of revocation (R. p. 7), from which order no appeal was taken, either to the Commissioners of the District of Columbia or to the Court of Appeals, as provided for in the Traffic Act.

Prior to the issuance of respondent's permit, he had been convicted of numerous traffic violations by the Police Court of the District of Columbia, and subsequent to its revocation by petitioner respondent was convicted of reckless driving and operating during the period for which his operator's permit had been revoked and suspended (R. p. 6), the latter offense being before his arrest in the instant case, which was, in fact, therefore, a second offense.

In April, 1928, respondent, while still a resident of the District, was issued District of Columbia automobile tags and registration card (R. p. 8).

Respondent then moved to the State of Virginia and on August 6, 1928, was issued a resident's motor-vehicle registration card and number plates for his automobile by the proper Virginia authorities, both in compliance with the registration laws of that State (R. p. 9). No permit, as required in the District, is issued by the State of Virginia to its operators.

Respondent on the 3d day of September, 1928, five months after he had left the District of Columbia and one month after registering his motor vehicle in the State of Virginia, was in a collision in the District of Columbia while operating his automobile. This, notwithstanding the fact that his permit and right to drive in the District had not been restored. He was thereupon arrested and charged with operating a motor vehicle in the District of Columbia during the period his right to do so had been revoked (Sec. 13 (*d*)). At the time respondent had been operating his vehicle in the District for about four hours, and had with him his Virginia registration card and his vehicle bore corresponding Virginia tags (R. p. 9).

3. The Procedure.

On September 4, 1928, petitioner filed in the Police Court of the District of Columbia an information charging that respondent

> "• • • on the 3rd day of September, in the year nineteen hundred and twenty-eight, in the

> District of Columbia aforesaid, and on K street Northwest, did then and there operate a certain motor vehicle and during the period for which his operator's permit to drive a motor vehicle in the District of Columbia had been revoked and suspended by the Director of Traffic * * * contrary to and in violation of an Act of Congress in such case made and provided, and constituting a law of the District of Columbia * * * (R. p. 2).

This charge was made under authority of Section 13 (*d*) of the Traffic Act for the District of Columbia, which reads as follows:

> "Any individual found guilty of operating a motor vehicle in the District of Columbia during the period for which his operator's permit is revoked or suspended or for which his right to operate is suspended under this Act shall, for each such offense, be fined not less than $100 nor more than $500, or imprisoned not less than 30 days nor more than one year, or both" (R. p. 7).

Trial was had in the Police Court of the District of Columbia before the Honorable John P. McMahon, one of the judges thereof, and a jury.

After the case was closed by both the District of Columbia and the defendant, an instruction based, among other things, on Section 8 of the Traffic Act was asked on behalf of the defendant. That section provides:

> "*Non-Residents.*
>
> SEC. 8. (*a*) The owner or operator of any motor vehicle who is not a legal resident of the

District, and who has complied with the laws of any State, Territory, or possession of the United States, or of a foreign country or political subdivision thereof, in respect of the registration of motor vehicles and the licensing of operators thereof, shall, subject to the provisions of this section, be exempt from compliance with section 7 and with any provision of law or regulation requiring the registration of motor vehicles or the display of identification tags in the District. Such exemption shall cover the period immediately following the entrance of such owner or operator into the District equal to the period for which the director has previously found that a similar privilege is extended to legal residents of the District by such State, Territory, or possession of the United States, or foreign country or political subdivision thereof. The director shall from time to time ascertain such privileges and cause his findings to be promulgated.

(*b*) Any operator of a motor vehicle who is not a legal resident of the District and who does not have in his immediate possession an operator's permit issued by a State, Territory, or possession of the United States, or foreign country or political subdivision thereof, having motor vehicle reciprocity relations with the District, shall not operate a motor vehicle in the District unless (1) the laws of the State, Territory, or possession of the United States, or foreign country or political subdivision thereof, under which the motor vehicle is registered do not require the issuance of a motor vehicle operator's permit or (2) he has submitted to examination within 72 hours after entering the

District and obtained an operator's permit in accordance with the provisions of section 7 of this Act. Any individual who violates any provision of this subdivision shall, upon conviction thereof, be fined not less than $5 nor more than $50 or imprisoned not less than 30 days, or both."

The instruction asked being as follows:

"That upon all the testimony, as a matter of law, the jury should be instructed to return a verdict of not guilty, on the ground that the defendant, Charles H. Fred, alias Hamilton C. Fred, was the operator of a Virginia owned motor vehicle, who had complied with the laws of the State of Virginia in respect to the registration of motor vehicles and the licensing of operators and was exempt from compliance with the District of Columbia law relating to the issuance of operators' permits as set forth in Section 7 and Section 13 (*d*) of the Traffic Act of said District, by reason of the provisions of Section 8, paragraphs (*a*) and (*b*), relating to non-residents, and that in view of the prior decision by the Court of Appeals of the District of Columbia in the case of King *vs.* The District of Columbia, 51 Appeals D. C. 160, rendered January 22, 1922, defendant was within his rights in operating a motor vehicle in the District of Columbia with Virginia tags and registration card." (R. p. 9.)

The court refused the requested instruction, to which refusal the defendant, by his counsel, there and then duly noted an exception.

Aside from other grounds, this instruction was not tenable, there being no evidence that reciprocity existed between Virginia and the District of Columbia, or that the Director of Traffic of the District of Columbia had previously so found. (R. p. 9.)

The court instructed the jury as follows:

> "That if they believed under the evidence that the defendant did at one time have a District of Columbia operator's permit and that permit was revoked and had not been restored to him on the 3rd day of September, 1928, and he was operating a motor vehicle in the District of Columbia on that date, it would be their duty to bring in a verdict of guilty."

To this instruction defendant, by his counsel, duly noted an exception.

The jury after considering the case, returned a verdict of guilty; and sentence was thereupon passed upon the defendant by the court.

The defendant was granted a writ of error by the Court of Appeals of the District of Columbia, and on June 3, 1929, the judgment of the Police Court was reversed upon the authority of King *v.* The District of Columbia, 51 App. D. C. 160. On June 13, 1929, the Court of Appeals recalled its mandate in the instant case to afford the District of Columbia opportunity to apply to the Supreme Court of the United States for a writ of certiorari.

The case is now before this Honorable Court by virtue of a writ of certiorari to the Court of Appeals of the District of Columbia.

Assignment of Errors.

The Court of Appeals erred as follows:

1. In holding that the decision in the case of King *v.* District of Columbia, 51 App. D. C. 160, was controlling and decisive of the issues here involved.

2. In holding, in effect, that one section of a statute should be construed, without regard to the intention, object or policy of the legislative body, to annul other provisions clearly granted by another and subsequent section thereof.

3. In finding that the Director of Traffic had entered into a reciprocal agreement with the State of Virginia under and by virtue of which a resident of the District of Columbia whose operator's permit was revoked could thereafter continue to operate a motor vehicle in the District of Columbia by becoming a resident of the State of Virginia, and licensing and registering his vehicle under the laws of that State.

4. In reversing the judgment of the Police Court which held respondent to be amenable to the provision of section 13 (*d*) of the Traffic Act.

ARGUMENT.

Differentiation of the King case (51 App. D. C. 160), followed by the Court of Appeals, from the case of present respondent.

King was convicted by the Police Court of the District of Columbia of operating an automobile in the

District of Columbia *without having a permit to do so*, in violation of the *police regulation* made and promulgated by the *Commissioners* under and by virtue of the police powers conferred upon them by Congress in the Acts of January 26, 1887, and February 26, 1892. From this finding King appealed. At that time there was no police regulation or statute which made it an offense to operate a motor vehicle in the District during the period for which the operator's permit was revoked or suspended.

In determining the King case the Court of Appeals had under consideration two things and two things only:

(1) The following provision from an Act approved March 3, 1917 (39 Stat. at L. 1004, 1012):

> "On and after December thirty-first, nineteen hundred and seventeen, all licenses, including identification tags and registrations, for motor vehicles heretofore granted shall expire and become null and void, and on and after January first, nineteen hundred and eighteen, there shall be charged annually for the licensing and registration of motor vehicles the following fees, which shall be paid annually to the collector of taxes of the District of Columbia and which shall include registration and the furnishing of an identification number tag—$5 for each vehicle of more than twenty-four horsepower and not exceeding thirty horsepower, $10 for each vehicle of more than thirty horsepower, $3 for each vehicle of twenty-four horsepower or less, and $2 for each motor cycle or similar mo-

tor vehicle: * * * *Provided further,* that *motor vehicles,* owned or operated by persons not legal residents of the District of Columbia but who have complied with the laws of the State of their legal residence requiring the registration of motor vehicles or licensing of operators thereof and the display of identification or registration numbers on such vehicles, and which identification numbers shall be displayed on such motor vehicles as provided by the laws and regulations of the District of Columbia while used or operated within the District, shall not be required to be licensed or registered or bear other identification numbers under the laws and regulations of the District if the State in which the owner or operator of such motor vehicle has his legal residence *extends the same privilege to the motor vehicles* owned or operated by legal residents of the District of Columbia; * * *."

(2) The following motor-vehicle reciprocity agreement between the District of Columbia and the State of Virginia:

"Anyone legally entitled to operated a motor vehicle in the State of Virginia shall be entitled to operate such vehicle in the District of Columbia, and without having District of Columbia license tags, and without having a District of Columbia driver's permit, so long as the Virginia authorities permit residents of the District of Columbia, legally entitled to operate vehicles there, to operate same within the State of Virginia, without Virginia license tags, and without a Virginia driver's permit. * * * That the

> State of Virginia, in which the defendant has his legal residence, extends the same privilege to the motor vehicles owned or operated by legal residents of the District of Columbia."

The court found that the District of Columbia had not, in said motor-vehicle reciprocity agreement, excluded residents of the State of Virginia whose District of Columbia operators' permits had been revoked. The case, therefore, was reversed and remanded on January 3, 1922.

More than three years after the King case was decided by the Court of Appeals, Congress passed an Act entitled "An Act to provide for the regulation of motor vehicle traffic in the District of Columbia, increase the number of judges of the police court, and for other purposes," approved March 3, 1925 (43 Stats. 1119), which Act was amended by the Act of July 3, 1926 (44 Stats. 812).

Section 8 (*a*) of said Act provides as follows:

> "The owner or operator of any vehicle who is not a legal resident of the District, and who has complied with the laws of any State, Territory, or possession of the United States, or of a foreign country or political subdivision thereof, in respect of the registration of motor vehicles and the licensing of operators thereof, shall, subject to the provisions of this section, be exempt from compliance with section 7 and with any provision of law or regulation requiring the registration of motor vehicles or the display of identification tags in the District. Such exemption shall cover the period immediately following the

> entrance of such owner or operator into the District equal to the period for which the director has previously found that a similar privilege is extended to legal residents of the District by such State, Territory, or possession of the United States, or foreign country or political subdivision thereof. The director shall from time to time ascertain such privileges and cause his findings to be promulgated."

Section 8 (*b*) provides as follows:

> "Any operator of a motor vehicle who is not a legal resident of the District and who does not have in his immediate possession an operator's permit issued by a State, Territory, or possession of the United States, or foreign country or political subdivision thereof, having motor vehicle reciprocity relations with the District, shall not operate a motor vehicle in the District unless (1) the laws of the State, Territory, or possession of the United States, or foreign country or political subdivision thereof, under which the motor vehicle is registered do not require the issuance of a motor vehicle operator's permit, or (2) he has submitted to examination within 72 hours after entering the District and obtained an operator's permit in accordance with the provisions of section 7 of this Act."

Is the same interpretation to be given to said Section 8 (a) of the Traffic Act as was given by the Court of Appeals in the King case to the provision of the Act of Congress of March 13, 1917? In determining this question it must be borne in mind that in the King

case that court said that when the meaning of a statute is doubtful great weight should be given to the construction placed upon it by the department charged with its execution, and that the court believed that the agreement between the District and the State expressed correctly the meaning of the statute, and that the *intention of Congress* was, therefore, that King should be permitted to operate a motor vehicle in the District notwithstanding the fact that his District of Columbia operator's permit had been revoked.

The defendant in the instant case was charged with operating a motor vehicle in the District during the period for which his operator's permit was revoked, in violation of said Section 13 (*d*) of the Traffic Act and not with operating without permit as in King case.

The Court of Appeals in its opinion in the Fred case refers to only two sections of the Traffic Act, namely, Sections 8 and 13 (*c*). There are more than thirteen sections in said Traffic Act, and it is respectfully submitted that they either were not sufficiently stressed before the Court of Appeals or the court departed from or disregarded the elementary principles with respect to the construction of statutes.

Had the Court of Appeals not merely attempted to determine the case at hand on the two sections to which it makes reference, it would have been constrained to have found that the intent of Congress was to prohibit the operation of vehicles by all persons, whether resident or non-resident, whose permit had not been restored after revocation or suspension. The intent of

the legislature in enacting the Traffic Act was to remove from the highways of this jurisdiction persons who by their character or actions in the manipulation of a motor vehicle (a recognized dangerous instrumentality) had been refused a permit or, having been granted one, had it suspended or revoked. It was unquestionably not the intent of the legislature to merely divest a person of documentary evidence of the fact that he had been authorized previously by the municipality to drive a motor vehicle, but to prevent him from having charge and operating one when by his former actions he had shown himself unfit to do so. In the face of the express declaration by Congress in Section 13 (*b*) of the Traffic Act that Fred's operating permit having been revoked by the Director of Traffic, no new permit should be issued to him for at least six months, except in the discretion of the Director; and notwithstanding the further express declaration by Congress in Section 7 (*a*) that if the Director believed that the reissuance of a permit to Fred might prove a menace to public safety, he might refuse the reissuance thereof; and notwithstanding the further express declaration by Congress in Section 13 (*d*) that if Fred was found guilty of operating a motor vehicle in the District during the period for which his operator's permit was revoked he should be punished, for each such offense, by a fine of not less than $100 nor more than $500, or imprisoned not less than thirty days nor more than one year, or both, the Court of Appeals has decided that Congress intended under the provisions of Section 8 of the Act to permit Fred to

do the very thing which Congress itself had already expressly declared he should not do, namely, operate a motor vehicle in the District of Columbia during the period for which his operator's permit was revoked, and to escape the punishment which Congress had already provided he should suffer if he was found guilty of *operating a motor vehicle in the District during the period for which his operator's permit was revoked.*

The transcript of record shows that Fred had been convicted previously as follows:

In the year 1922: for driving an automobile while intoxicated (twice);

In the year 1923: for driving an automobile while intoxicated; for speeding; for driving on wrong side of street; for driving with illegal brakes; for making illegal turn in street;

In the year 1925: for speeding; for reckless driving;

In the year 1927: for reckless driving;

In the year 1928: for operating motor vehicle during the period for which his operator's permit was revoked; and for operating while under the influence of intoxicating liquor. (R. p. 8.)

Is it not readily conceived that a person, who has been charged and convicted of offenses of the character this respondent has been, is a menace to life and limb of others, and equally so to their property when permitted to operate a motor vehicle?

Under the decision of the Court of Appeals it is useless for the Director of Traffic to attempt to take away

the right to drive a motor vehicle within the District of Columbia, for the reason that the operator can adopt the convenient expedient of crossing the border into an adjacent State, there register his motor vehicle, procure a State operator's permit, come back to this jurisdiction and operate unmolested. This is true whether the individual in question has been convicted of driving while under the influence of intoxicating liquor, leaving the scene of an accident without making his identity known, reckless driving, or any other serious offense. The effect is that citizens of the District of Columbia are without any protection for their own safety or the safety of their property against the actions of such individuals.

If Fred had continued to reside in the District after the revocation of his operator's permit by the Director of Traffic, instead of having moved to the State of Virginia, and had operated a motor vehicle in said District during the period for which his operator's permit was revoked, it could not be denied that he would have been amenable to the provisions of Section 13 (*d*) of the Traffic Act or that a conviction thereunder would have been proper.

Could it, with reason, be said that Congress intended that a person divested of authority to operate a vehicle within this jurisdiction, because he had shown himself unfit to drive, can, under the guise of comity, have that right restored by moving to an adjacent state? It cannot be contended that being possessed of documentary evidence of the right to operate such a vehicle in a sister state renders that person any the less a

menace to person and property in operating a motor vehicle on the highways of this jurisdiction. It is, therefore, absurd to even imagine that such a construction could have been thought of by the legislative body. This is especially so in view of the fact that the Act itself is fraught with provisions unmistakably showing that its whole aim was to rid the highways of persons who by their condition or manner of driving rendered travel unsafe for those lawfully upon them. To hold otherwise would, in effect, mean that the comity provision of the Act—to all intents and purposes meant only to be auxiliary to the law itself—overrides the entire intent and purpose of the legislation involved.

After the revocation of his operator's permit by the Director of Traffic Fred had a remedy specially provided by Congress in the Traffic Act. Under Section 13 (*a*) Fred was granted the right of appeal to the Commissioners of the District of Columbia for a review of the order of revocation made by the Director, and in the event the Commissioners sustained the order of the Director it was provided in said section that Fred might apply to the Court of Appeals for a writ of error to review the order of the Director or the decision of the Commissioners. It was also provided in said section that the decision of the Court of Appeals *should be final* and that an application to said court for a writ of error *should not operate as a stay of such order of the Director or the decision of the Commissioners.*

Suppose Fred had appealed to the Commissioners for a review of the order of revocation made by the Director and the Commissioners had sustained the order of the Director; that thereupon Fred had applied for and had been granted a writ of error by the Court of Appeals, and that upon a review that court decided that Fred's operator's permit had been properly revoked by the Director.

Following the decision of the Court of Appeals to its logical conclusion, if Fred, within a day or two after he had filed with the Commissioners an appeal from the order of the Director, had stepped across the line in the State of Virginia and there registered his motor vehicle and procured from that State a registration card, he would have had the right, under said Section 8, to operate a motor vehicle in the District not only during the time his appeal was pending before the Commissioners but also during the time his appeal was pending in the Court of Appeals and even after the Court of Appeals had finally decided that his operator's permit had been properly revoked by the Director. And this, notwithstanding the fact that Congress in said Section 13 (*a*) expressly provides that an application to the Court of Appeals for a writ of error *shall not operate as a stay of such order of the Director or the decision of the Commissioners*, and that *the decision of said court shall be final.*

It is intimated by the Court of Appeals in its decision that the remedy for the above situation is provided by Section 13 (*c*) of the Traffic Act, and that if Fred, while operating a motor vehicle in the District

as a resident of the State of Virginia, should violate any provision of the Traffic Act requiring revocation or suspension for any period of the operator's permit, upon his conviction thereof, the Director could suspend for such period as he saw fit the right of Fred to operate in the District under the registration card of the State of Virginia and notify the proper Virginia authorities of such suspension.

The application of the age-worn expression "An ounce of prevention is worth a pound of cure" was never more fitting than at this juncture. As in the prevention of crime so in the case of the protection of life is it incumbent upon the authorities, whether by legislation or the administration thereof, to see to the safety of its citizens rather than punish those who by their unlawful acts have brought about an injury.

Then too, it would be useless for the Director to suspend the right of Fred to operate in the District under the registration card issued to him by the State of Virginia, as it would only be necessary for Fred to step across the line into the State of Maryland and there register his motor vehicle and procure from that State an operator's permit. He would thereupon, under the decision of the Court of Appeals, be the owner or operator of a motor vehicle who is not a legal resident of the District who had complied with the laws of the State of Maryland in respect to the registration of his motor vehicle and the licensing of himself as the operator, and would have the right, under said Section 8 of the Traffic Act, to operate a motor vehicle in the District until such time as he again

committed such an offense as calls for the revocation or suspension of the operator's permit. When the Director of Traffic suspended his right to operate in the District as a resident of the State of Maryland he could move into another State and keep up this mode of procedure indefinitely.

When viewed in the light of all of the other provisions of the Traffic Act and its purpose, it is self evident that Congress did not intend by Section 8 (*a*) to permit persons whose right to operate in the District of Columbia had been suspended or revoked to continue to do so by merely taking up residence in another State. Such a construction would create the absurd results set forth immediately before and be contradictory of the very intent of the legislature. This is borne out by the fact that Congress by Section 13 (*c*) has specifically provided that the right of even a bona fide non-resident to operate a motor vehicle in this jurisdiction may be suspended upon his conviction of a violation of any provision of the Act requiring revocation or suspension. Thus, again, clearly indicating that the purpose of Congress was to protect the lives and property of citizens of his jurisdiction.

When the defendant operated his motor in the District during the period for which his operator's permit was suspended he was not a *bona fide* non-resident, *not having an operator's permit issued by the Director* but having in his immediate possession a registration card for his motor vehicle issued by the State of Virginia. He was in the nature of an impostor. After his permit was revoked by the Director he went

over into the State of Virginia and applied for and was issued a registration card by that State. Is it not a reasonable inference or presumption that when he applied to the State of Virginia for a registration card for his motor vehicle he withheld from the proper authorities of that State the fact of the revocation of his permit by the Director of Traffic of the District of Columbia, and the reasons therefor? And was not his failure so to do a continuing wrong in the nature of a cheat? His claim that he was a *bona fide* non-resident of the District and entitled, under said Section 8 of the Traffic Act, to operate a motor vehicle in the District during the period for which his operator's permit was revoked was at all times wrongful, a fraud upon Congress, and a peril to the citizens of the District of Columbia. Right to operate a motor vehicle in the District may not justly or reasonably be rested on a foundation so abhorrent to public policy (Minneapolis, St. P. & S. S. Ry. Co. *v.* Rock, United States Supreme Court Reporter, Volume 49, No. 15, 363, decided May 13, 1929).

In the case of Croson *v.* District of Columbia, 55 App. D. C., 122, 123, the Court of Appeals had under consideration the same section of the Act of March 3, 1917 (39 Stat. 1004, 1012), passed upon by it in the King case, *supra*. The court in its opinion said:

> "It is even more important, in our view, that the drivers of all vehicles within the District should satisfy the requirements of the traffic regulations as to their qualifications to operate motor vehicles than that those vehicles should

> be registered and carry identification tags. The vehicles are dangerous only when driven, and, unless *all drivers* are to be subject to these reasonable regulations, there can be no real protection to the public. After all, as already intimated, *it is a question of congressional intent, which is clear in this case.*"

To ascertain the intent of Congress relative to the right to operate motor vehicles in the District of Columbia, the issuance, revocation and suspension of operators' permits, and of the right to operate, it is necessary to consider all of the provisions of the Traffic Act.

After authorizing the Director by Section 6 (*b*) to make reasonable regulations with respect to the issuance and revocation of operators' permits, Congress in Section 7 (*a*) clearly expresses its intention that the Director shall limit the issuance or reissuance of operators' permits to such individuals as are found by him, after examination, to be mentally, morally, and physically qualified to operate motor vehicles in such manner as not to jeopardize the safety of individuals or property. Congress specifically provides in this section:

> "Should the Director believe that the issuance or reissuance of permit in accordance with the provisions of this Act may prove a menace to public safety, he may, in his discretion, refuse the issuance or reissuance thereof."

The section of the Act of March 13, 1917, under consideration by the Court of Appeals in the King case

has been repealed by the Traffic Act, and with its repeal passed, the agreement between the State of Virginia and the District of Columbia.

In the Traffic Act of March 3, 1925, the Director of Traffic is charged with its execution. No help is given by the Director as to the construction to be placed upon Section 8 as it appears therein, because he has not undertaken (as did the Commissioners in respect to the Act of March 13, 1917) to enter into any agreement with any State whereby any individual who has become a resident of such State after the revocation of his District operator's permit is permitted to operate a motor vehicle in the District during the period for which his District operator's permit is revoked, provided he has complied with the laws of said State in respect of the registration of the motor vehicle and has obtained an operator's permit from said State. We are limited, therefore, to the provisions of the Traffic Act in determining the intent of Congress with reference to the operation within this jurisdiction of a motor vehicle by a person whose right to do so had been suspended, and who subsequent thereto had taken up residence in a bordering State.

2. In construing a statute the provisions of the whole statute, its object and policy must prevail over a single provision thereof, and Section 13 (d) of the District Traffic Act controls and is paramount to the prior Section 8, relating to non-residents.

The elementary rule of statutory construction that all parts of an Act of Congress relating to the same

subject must be considered together has, up to the time of the decision in the instant case, been frequently applied by the lower court. (Miles Planting Co. *v.* Carlisle, 5 App. D. C. 138, 144; District of Columbia *v.* De Walt, 31 App. D. C. 326.)

In the case of District of Columbia *v.* Bailey, 57 App. D. C. 151, the court, in expounding the same Act under consideration here, stated that it should be interpreted in its entirety in order to give full force to all its provisions. (See also Goldman *v.* District of Columbia, 57 App. D. C., 106; Wheeler *v.* District of Columbia, 57 App. D. C. 106; Smallwood *v.* District of Columbia, 57 App. D. C. 58).

In Miles Planting Company *v.* Carlisle, 5 App. D. C. 138, 144, it was said:

> "It is an undoubted rule of construction that the special meaning or purpose that might under some circumstances be found to lurk in a single word or part of a sentence must yield to the plain intention disclosed by the whole."

In Peck *v.* Jenness, 7 How. 623, the Supreme Court of the United States said:

> "But it is among the elementary principles with regard to the construction of statutes, that every section, provision, and clause of a statute shall be expounded by a reference to every other; and, if possible, every clause and provision shall avail, and have the effect contemplated by the legislature. One portion of a statute should not be construed to annul or destroy what has been clearly granted by another. The

> most general and absolute terms of one section may be qualified and limited by conditions and exceptions contained in another, so that all may stand together."

In Peck *v.* Boisdore's Heirs, 8 How. 122, the Supreme Court of the United States said:

> "In expounding a statute, we must not be guided by a single sentence or member of a sentence, but look to the provisions of the whole law, and to its object and policy."

In Brown *v.* Ducheme, 19 How. 183, the Supreme Court of the United States said:

> "The general words used in the clause of the patent laws granting the exclusive right to the patentee to use the improvement, taken by themselves, and literally construed, without regard to the object in view, would seem to sanction the claim of the plaintiff. But this mode of expounding a statute has never been adopted by any enlightened tribunal—because it is evident that in many cases it would defeat the object which the legislature intended to accomplish. And it is well settled that, in interpreting a statute, the court will not look merely to a particular clause in which general words may be used, but will take in connection with it the whole statute (or statutes on the same subject) and the objects and policy of the law, as indicated by its various provisions, and give to it such a construction as will carry into execution the will of the legislature, as thus ascertained, according to its true intent and meaning."

In Pollard *v.* Bailey, 20 Wall. 525, 526, this Honorable Court said:

> "The intention of the legislature, when properly ascertained must govern in the construction of every statute. For such purpose the whole statute must be examined. Single sentences and single provisions are not to be selected and construed by themselves, but the whole must be taken together."

The comity contemplated by Section 8 (*a*) of the Traffic Act between the District of Columbia and other States does not render ineffective the direct mandate of Section 13 (*d*) of the Act, which specifically prohibits the operation of a motor vehicle by any individual in the District of Columbia during the period his or her permit has been suspended or revoked. In the instant case the transcript of record is silent as to any recognition on the part of the Director of Traffic of any comity whatsoever between this jurisdiction and the State of Virginia. Even if there had been recognition, a person whose permit had been suspended or revoked, and not restored, operating a vehicle within the jurisdiction during that time would none the less be amenable to the penalty fixed by Section 13 (*d*). To hold otherwise would give the Act a meaning plainly contrary to the one expressed therein. This is peculiarly so because of the well-recognized principle that it is the duty of courts to enforce all acts according to their terms. It is equally true that where there is a possible inconsistency between different provisions of an act the one last appearing is to be given

in the eyes of the law preference. This, for the reason that it is deemed to embody the last expression of the legislative will.

Sutherland on Statutory Construction, at pages 292-293, says:

> "* * * in the reading of a bill, matter near the close may be presumed to receive the last consideration."

In Section 221, page 294, of the same work it is stated:

> "The true principle undoubtedly is that the sound interpretation and meaning of the statute, in view of the enacting clause, saving clause and proviso, taken and considered together, is to prevail."

"Ex ante cedentibus et consequentibus fit optima interpretatio."

Rogers *v.* Rogers, 3 Wend. 503-526.

In both Section 8 and Section 13 (*d*) the verb "shall" is used by Congress. It is used, however, in no technical sense. Being used in Section 13 (*d*) in connection with the imposition of a penalty, it cannot be read as "may." The sole office of statutory construction is to give force to the naturally implied prohibition, which the imposition of a penalty presupposes. The Traffic Act was enacted to safeguard the health, safety and welfare of the public. The prohibition and penalty found in Section 13 (*d*) applies to all persons, as exemplified by the rulings of courts in convicting

all persons selling and transferring automobiles without first obtaining and properly executing bills of sale therefor. The purpose of these Acts being to prevent, as far as possible, the stealing of all automobiles. (Insurance Co. *v.* Todino, 145 N. E. 25; Howell *v.* Conn. Fire Ins. Co., 257 S. W. 178.)

The penalty found in Section 13 (*d*) of the Act applies to all persons. The right to the use of the highways of the District of Columbia exists in a non-resident automobile owner, but it is not an absolute right (State *v.* Johnson, 79 N. J. L. 49, 74 Atl. 538). The principle of comity and reciprocity is based upon mutuality, and we have shown, heretofore, no mutuality on the subject-matter involved here exists between the State of Virginia and the District of Columbia.

Respondent was not qualified to operate a motor vehicle in the District. Its operation by him brought merely the statutory consequence of having done a prohibited act. As was said in the following case relating to the operation of a motor vehicle by a non-resident, the act was sufficient to constitute a crime:

> Pawloski *v.* Hess (Mass.), 144 N. E. 760, 35 A. L. R. 945, 947-8, 949, 950:
>
> "This statute is plainly enacted in the exercise of the police power. It is designed to afford protection to the personal safety of travelers on the highways of our commonwealth. Its purpose is to promote the public safety and to conserve the public health. These ends are universally recognized as appropriate

objects for the exercise of the police power. * * * There is no constitutional mandate, so far as we are aware, which compels the government of this commonwealth to provide highways for general public use. It is an appropriate governmental function to undertake such public works. Having constructed them, reasonable and uniform regulations may be enforced concerning their use. *Legislation attempting to put non-residents on the same general footing as our own citizens with respect to the use of such public facilities does not violate any constitutional guaranty.* Hendrick *v.* Maryland, 235 U. S., 610, 59 L. ed. 385, 35 Sup. Ct. Rep. 140. * * * It is the duty as well as the right of the commonwealth to adopt all practicable and reasonable measures to insure the safety and health of all travelers on highways, whether in motor vehicles or in other ways. 'The movement of motor vehicles over the highways is attended by constant and serious dangers to the public.' Hendrick *v.* Maryland, 235 U. S. 610, 622, 59 L. ed. 385, 390, 35 Sup. Ct. Rep. 140, 142. It is also matter of common knowledge that many lives are lost and large numbers of persons injured through the operation of motor vehicles on highways. Any rational legislation calculated to diminish this appalling impairment of human usefulness and happiness is within the province of the legislative department of government. Com. *v.* Pentz, 247 Mass. 500, 143 N. E. 322. * * * There is no necessary duration to the sojourn here of a non-resident operating a motor vehicle on our highways such as commonly would accompany the transaction of business or the establishment of any mercantile or manu-

facturing enterprise. He might easily betake himself outside our boundaries in a few hours even from the most remote corner of the commonwealth, and from most places in a considerably shorter time.

These considerations cannot override fundamental rights or warrant attempts at unauthorized extensions of jurisdiction. They merely serve to emphasize the well recognized presumption in favor of the constitutionality of every statute and the requirement generally fixed by courts for their guidance, that statutes will be refused enforcement only when their conflict with the Constitution is beyond reasonable doubt. They indicate that the legislature in enacting the statute may have been attempting to remedy pressing evils of a practical nature. As was said in Hendrick *v.* Maryland, 235 U. S., 610, 624, * * * with respect to this special kind of statute: 'The action of the state must be treated as correct unless the contrary is made to appear.' * * * When the law clothes an intentional and intelligent act with specified consequences, then the doing of that act commonly entails those consequences. That principal is most frequently applied in the enactment of statutes penalizing as criminal the performance of a designated act, regardless of the motive which prompted it, or knowledge of the legislative prohibition on the part of the one performing the act. The simple doing of the act, not evil in itself, but merely prohibited by the legislature, brings about the statutory consequences of crime. (Citing numerous authorities.)

It is settled that police regulations of a reasonable nature respecting the use of its high-

> ways by non-resident operators of motor vehicles may be enacted by the several states. It is settled further that such regulations may go to the extent of utter prohibition unless and until licensed by the state. Kane *v.* New Jersey, 242 U. S. 160. * * *."

See also: *Union Securities Co. v. Adams* (33 Wyo. 45), 50 A. L. R. 23.

3. The lower Court erred in finding that the Director of Traffic had entered into a reciprocal agreement with the State of Virginia under and by virtue of which a resident of the District of Columbia whose operator's permit was revoked, could thereafter continue to operate a motor vehicle in the District of Columbia by becoming a resident of the State of Virginia, and licensing and registering his vehicle under the laws of that State.

In its opinion the lower Court (Rec., p. 12) states:

> "The section (Section 8) charges the Director of Traffic with the duty of ascertaining whether a similar privilege is extended to legal residents of the District in such States, and to cause his findings to be promulgated. *This he has done.*" (Italics ours.)

At the time of the conviction of the respondent, there was no reciprocity agreement between the Director of Traffic and the State of Virginia purporting to confer upon respondent, as a resident of the State of Virginia, the right to operate a motor vehicle in the District of Columbia during the period for which his District operator's permit was revoked.

If the provisions of the Act of March 3, 1917 (39 Stats. 1004, 1012), applied both to the vehicle owned or operated by a non-resident as well as to the non-resident owner or operator himself, these provisions, together with the reciprocal agreement passed upon in the King case, have been repealed by the District Traffic Act.

Since the passage of the Traffic Act the Director of Traffic has not entered into any such reciprocal relations or agreement with the State of Virginia. The Transcript of Record herein contains no evidence of any such agreement. On the contrary, the Record, page 9, contains the following in connection with the overruling of the motion for a directed verdict:

> "Thereupon the court, Honorable John P. McMahon, presiding, overruled said motion, stating that no agreement had been shown to exist between the State of Virginia and the District of Columbia, whereby residents of that State and the District are permitted and entitled to operate motor vehicles after revocation of permits, nor did such right exist as a matter of reciprocity, and that Section 8 of the District Traffic Act could not and did not apply because Section 13 (*d*) specifically prohibits any individual from operating * * * during the period for which his operator's permit had been revoked or suspended * * *."

Under Section Six (*b*) of the District Traffic Act, the Director of Traffic is authorized to make reasonable regulations with respect to brakes, horns, * * *, the issuance and revocation of operators' permits, and

such other regulations with respect to the control of traffic in the District, *not in conflict with any law of the United States, as are deemed advisable* * * *."

Not only does the Record herein, page 9, show there was no agreement between the Director of Traffic and the State of Virginia authorizing the respondent, as a resident of Virginia, to operate a motor vehicle in the District of Columbia during the period for which his District operator's permit was revoked, but if the Director of Traffic had undertaken to enter into any such agreement with the State of Virginia, it would have been null and void because it would have been beyond the scope of the authority conferred upon the Director by Section 6 (*b*) of the District Traffic Act and would have been inconsistent with the express provision of Section 13 (*d*) of said Act.

4. The judgment of the Police Court should be sustained.

The control of the streets in the District of Columbia is in the Commissioners of the District. The legislation in question here is a matter of purely local concern, and it is submitted that petitioner is entitled and justified, under the terms of the District Traffic Act, in requiring those who use its streets and highways to obey its laws. Hendrick *v.* Maryland, 235 U. S. 610-622-624.

When in 1925 and 1926 Congress passed the Traffic Act for the District of Columbia, it was unquestionably mindful of the fact that the congested condition of the highways by the great influx of automobiles made the proper regulation of vital importance. Likewise

Congress had before it the fact that the Court of Appeals of the District of Columbia by its decision in the King case left no redress but Congress, in the matter of preventing traffic violators whose permits had been revoked because of the reckless or wanton manner in which they had operated vehicles from entering this jurisdiction under the guise of being residents of another State. Knowing this condition Congress purposely enacted the prohibition set forth in Section 13 (*d*) of its Act, and purposely granted full power to the public officer created thereby, subject, of course, to the control of petitioner, which alone could promulgate any valid regulations or proclamations.

We respectfully submit that the decision of the Court of Appeals of the District of Columbia should be reversed and the conviction had against respondent under the positive inhibition of Section 13 (*d*) of the Traffic Act be affirmed.

Respectfully sumbitted,

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